

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

UNITED STATES OF AMERICA,

Plaintiff,

and

SIERRA CLUB,

Intervenor-Plaintiff,

v.

DTE ENERGY COMPANY AND
DETROIT EDISON COMPANY,

Defendants.

Civil Action No.
2:10-cv-13101-BAF-RSW

Judge Bernard A. Friedman

Magistrate Judge R. Steven
Whalen

**JOINT MOTION AND BRIEF FOR FURTHER STAY PENDING
SETTLEMENT NEGOTIATIONS,
AND STATUS REPORT ON NEGOTIATIONS**

Pursuant to Local Rule 7.1(a), the Parties jointly move for a six-month stay of this case while they continue to engage in settlement negotiations seeking to resolve this case in its entirety. Specifically, the Parties seeks a stay through May 14, 2019. All Parties—Plaintiff United States of America (“United States”), Defendants DTE Energy Company and Detroit Edison Company (collectively, “DTE”), and Plaintiff-Intervenor Sierra Club—join in this motion.

This joint filing also serves as the Parties’ status report on negotiations, as required by the Court’s order granting the current stay [ECF No. 242].

In further support of this motion, the Parties state the following:

1. This litigation began in 2010 when the United States filed its complaint and motion for preliminary injunction. On November 23, 2010, Sierra Club's motion to intervene as a plaintiff in this proceeding was granted. The litigation has been to the United States Court of Appeals for the Sixth Circuit twice. Most recently, on January 10, 2017, the Sixth Circuit reversed and remanded this Court's summary judgment ruling in a 2-1 decision with three separate opinions. [Case nos. 14-2274, 14-2275, Doc. 40-2]. The Sixth Circuit's mandate was issued on December 14, 2017, and was received by the clerk of this Court on the same day [ECF No. 236].
2. On February 2, 2018, the Court granted the United States' and DTE's joint motion for a stay of the litigation through June 4, 2018 [ECF No. 239]. At the expiration of that stay, the Parties sought, and the Court granted, a stay through December 11, 2018 [ECF No. 242].
3. Since the Court granted the original stay, the United States and DTE have engaged in productive settlement discussions. Starting in June 2018, those discussions included the Sierra Club as well.
4. All Parties believe that discussions thus far have been fruitful and are hopeful that it will be possible to reach an agreement to resolve all the claims pending before the Court. The Parties further believe that the continuing expense

and uncertainty of this expansive litigation favors exploring whether a resolution by agreement can be reached before the parties re-engage in full-blown discovery and trial preparation on multiple, complex claims. Both judicial efficiency and conservation of the Parties' resources favor a further stay while settlement negotiations are pursued.

5. Therefore, the Parties respectfully request that the Court extend the stay of this litigation through May 14, 2019. The Parties propose that at that time they would provide the Court a status report on negotiations and a recommendation for next steps.

BRIEF IN SUPPORT OF MOTION

For their Brief in Support of their Joint Motion for Stay Pending Settlement Negotiations, the parties rely upon the reasons and authority set forth in the Motion.

Respectfully submitted, this the 12th day of December 2018.

HUNTON & WILLIAMS LLP

/s/ Thomas A. Benson

Thomas Benson
thomas.benson@usdoj.gov
Kristin M. Furrie
kristin.furrie@usdoj.gov
U.S. Department of Justice
Environmental & Natural Resource Div.
Ben Franklin Station
P.O. Box 7611
Washington, DC 20044
202-514-5261

Peter Caplan
U.S. Attorney's Office
211 W. Fort Street
Suite 2001
Detroit, MI 48226

Counsel for Plaintiff United States

/s/ Shannon Fisk

Shannon Fisk
Managing Attorney, Coal Program
Earthjustice
1617 John F. Kennedy Blvd., Suite
1130
Philadelphia, PA 19103
T: 215-717-4522
C: 215-327-9922
earthjustice.org

*Counsel for Plaintiff-Intervenor
Sierra Club*

/s/ Harry M. Johnson, III

F. William Brownell
brownell@hunton.com
Harry M. Johnson, III
pjohnson@hunton.com
Makram B. Jaber
mjaber@hunton.com
Hunton & Williams LLP
1900 K Street, N.W.
Washington, D.C. 20006-1109
(202) 955-1500

Brent A. Rosser
Hunton & Williams LLP
101 South Tryon Street
Suite 3500
Charlotte, North Carolina 28211
brosser@hunton.com
(704) 378-4707

Matthew J. Lund (P48632)
Pepper Hamilton LLP
4000 Town Center, Suite 1800
Southfield, Michigan 48075
lundm@pepperlaw.com
(248) 359-7370

Michael J. Solo (P57092)
Andrea E. Hayden
DTE Energy
One Energy Plaza
Detroit, Michigan
solom@dteenergy.com
haydena@dteenergy.com
(313) 235-9512

Counsel for Defendants